FILED

(1) 99 703 OCT 20 1999

No. _____

OFFICE OF THE CLERK

In The Supreme Court of the United States

MARLIN LEE MILLS,

Petitioner,

v.

JOSEPH P. MEADOWS, *et al.*,

Respondents.

On Petition for a Writ of Certiorari to the United States Court of Appeals for the Fourth Circuit

---

PETITION FOR WRIT OF CERTIORARI

Irwin R. Kramer
KRAMER & ASSOCIATES
Counsel of Record
Suite 230
11403 Cronridge Drive
Owings Mills, Maryland 21117
(410) 581-1391

Counsel for Petitioner

LANTAGNE LEGAL PRINTING
801 East Main Street Suite 100 Richmond, Virginia 23219 (800) 847-0477

4891

QUESTIONS PRESENTED

Because law enforcement officers should not be subjected to varying levels of First Amendment protection in different states, Petitioner Marlin Lee Mills respectfully requests that this Court resolve splits in the Circuits on the following issues:

I. **Considering this Court's holdings in *Elrod* and *Branti*, do sheriffs have the unrestricted power to fire deputies on the basis of political affiliation regardless of whether such affiliation has any connection with their job responsibilities?**

II. **Before firing a deputy in retaliation for his political expression and campaign activity, must sheriffs demonstrate a disruptive impact which outweighs the employee's First Amendment interests in light of this Court's holdings in *Pickering* and *Connick*?**

III. **Where deputies are allegedly discharged both on the basis of their political affiliations and on the basis of their political expression and campaign activities, should the Circuits apply this Court's tests in *Elrod-Branti*, *Pickering-Connick*, or both?**

PARTIES TO THE PROCEEDING

The parties to the proceeding before the Court of Appeals were Marlin Lee Mills, Joseph P. Meadows, and Harford County, Maryland.

Petitioner Marlin Lee Mills respectfully wishes to advise this Court of the interest of the National Association of Police Officers as *amicus curiae* in support of this Petition.

TABLE OF CONTENTS

Page

Questions Presented i

Parties to the Proceeding ii

Table of Contents iii

Table of Citations iv

Opinions Below 1

Statement of Jurisdiction 1

Constitutional and Statutory Provisions Involved 1

Statement of the Case 2

Reasons for Granting the Writ 7

I. The Lower Courts Are Ignoring the First Amendment by Providing Sheriffs with the Unrestricted Power to Terminate Members of Other Political Parties 10

II. While Some Circuits Have Followed this Court's Mandate in *Elrod* and *Branti*, Others Have Disregarded the First Amendment by Permitting Widespread Political

Dismissals 12

III. By Ignoring the Protections Which this Court Established in *Pickering* and *Connick*, the Court of Appeals Has Opened the Door to Dismissals Designed to Punish Political Dissent 14

IV. This Court Should Eliminate Growing Confusion Among the Circuits Over the Application of the *Pickering-Connick* Test 18

Conclusion 20

TABLE OF CITATIONS

Cases Cited:

AFSCME v. Morse,
812 F. Supp. 278 (D.N.H. 1993) 13

Baum v. Webb,
863 F. Supp. 918 (E.D. Ark. 1994) 13

Barrett v. Thomas,
649 F.2d 1193 (5th Cir. 1981),
cert. denied, 456 U.S. 925 (1982) 13

Berger v. Battaglia,
779 F.2d 922 (4th Cir. 1985) 16

Brady v. Fort Bend County,
58 F.3d 173 (5th Cir. 1995) 13

Branti v. Finkel,
445 U.S. 507 (1980) ..... *passim*

Buckley v. Valeo,
424 U.S. 1 (1976) 8, 15

Burns v. County of Cambria, Pennsylvania,
971 F.2d 1015 (3d Cir. 1992),
cert. denied, 506 U.S. 1081 (1993) 13

Connick v. Myers,
461 U.S. 138 (1983) ..... *passim*

Cutcliffe v. Cochran,
117 F.3d 1353 (11th Cir. 1997) 12, 13, 18

Dickeson v. Quarberg,
844 F.2d 1435 (10th Cir. 1988) 13

Elrod v. Burns,
427 U.S. 347 (1976) ..... *passim*

Garrity v. New Jersey,
385 U.S. 493 (1967) 7

Hall v. Tollett,
1997 WL 651344 (6th Cir. Oct. 22, 1997) 13

Harte-Hanks Comm., Inc. v. Connaughten,
491 U.S. 657 (1989) 8, 15

Jenkins v. Medford,
119 F.3d 1156 (4th Cir. 1997),
cert. denied, 118 S. Ct. 881 (1998) 14

Joyner v. Lancaster,
815 F.2d 20 (4th Cir. 1987) 16

Keyishian v. Board of Regents,
385 U.S. 589 (1967) 9

McEvoy v. Spencer,
124 F.3d 92 (2d Cir. 1997) 18

Morris v. Crow,
117 F.3d 449 (11th Cir. 1997) 19

O'Hare Truck Service, Inc. v. City of Northlake,
518 U.S. 712 (1996) ..... *passim*

Perry v. Sindermann,
408 U.S. 593 (1972) 9

*Pickering v. Board of Educ. Of
Township High School Dist. 205*,
391 U.S. 563 (1968) ..... *passim*

Roberts v. U.S. Jaycees,
468 U.S. 609 (1984) 9

Rodriguez Rodriguez v. Munoz Munoz,
808 F.2d 138 (1st Cir. 1986) 18

Roth v. United States,
354 U.S. 476 (1957) 8, 15

Shelton v. Tucker,
364 U.S. 479 (1960) 9

Stough v. Gallagher,
967 F.2d 1523 (11th Cir. 1992) 19

Terry v. Cook,
866 F.2d 373 (11th Cir. 1989) 13

Thomas v. Carpenter,
881 F.2d 828 (9th Cir. 1989),
cert. denied, 494 U.S. 1028 (1990) 13

Thomas v. Collins,
323 U.S. 516, 530 (1945) 9

Upton v. Thompson,
930 F.2d 1209 (7th Cir. 1991),
cert. denied, 503 U.S. 906 (1992) 13

Voivodich v. Lopez,
48 F.3d 879 (5th Cir.),
cert. denied, 116 S. Ct. 169 (1995) 19

Warzon v. Drew,
60 F.3d 1234 (7th Cir. 1995) 18

Constitutions:

U.S. Const. amend. I ..... *passim*

Statutes Cited:

42 U.S.C. § 1983 ..... *passim*

APPENDIX

Opinion of the United States Court of
Appeals for the Fourth Circuit
Filed July 22, 1999 ..... A-1

Opinion of the United States District
Court for the District of Maryland
Filed April 16, 1998 ..... A-7

Order of the United States District
Court for the District of Maryland
Filed April 16, 1998 ..... A-17

Petitioner Marlin Lee Mills ("Mills"), respectfully requests that a writ of certiorari be issued to review the judgment of the United States Court of Appeals for the Fourth Circuit in this case.

OPINIONS BELOW

The opinions of the United States Court of Appeals for the Fourth Circuit and of the United States District Court for the District of Maryland can be found in Appendix A.

STATEMENT OF JURISDICTION

The judgment of the United States Court of Appeals for the Fourth Circuit ("Court of Appeals") was entered on July 22, 1999. The jurisdiction of this Court is invoked under 28 U.S.C. § 1254(1).

CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED

The First Amendment to the United States Constitution provides:

> Congress shall make no law respecting an establishment of religion, or prohibiting the free exercise thereof; or abridging the freedom of speech, or of the press; or the right of the people peaceably to assemble, and to petition the Government for a redress of grievances.

42 U.S.C. § 1983 provides in pertinent part:

> Every person who, under color of any statute,

> ordinance, regulation, custom, or usage, of any State or Territory or the District of Columbia, subjects, or causes to be subjected, any citizen of the United States or other person with the jurisdiction thereof to the deprivation of any rights, privileges, or immunities secured by the Constitution and laws, shall be liable to the party injured in an action at law, suit in equity, or other proper proceedings for redress. * * *

STATEMENT OF THE CASE

This case presents this Court with alleged First Amendment violations which have become all too common and which have been analyzed in a multitude of different ways by different Circuits.

After 23 years of dedicated service as a member of the Harford County Sheriff's Office, Mills was terminated from this police force by the first Republican Sheriff in Harford County history, Joseph P. Meadows ("Sheriff Meadows"). Without any basis for this termination, Sheriff Meadows cited Mills' political association with his Democratic predecessor, Robert Comes ("Comes"), and Mills' activities as president of the Harford County Democratic Club. J.A. 57-65. Although Mills had always maintained the highest standards of professionalism in his job, Sheriff Meadows forced this veteran law enforcement officer to retire on December 19, 1994. J.A. 106.

Having joined the Sheriff's Office in 1971, Mills served with distinction under the administrations of five separate sheriffs in Harford County. From 1990 through 1994, Mills served under the Comes administration. As the President of the

Harford County Democratic Club and as an active and concerned citizen of Harford County, Mills supported his fellow Democrat when the incumbent sheriff ran for re-election in 1994. Despite Mills' support, Sheriff Comes lost to his Republican challenger. J.A. 105.

Just after taking office, Sheriff Meadows questioned other members of his office about Mills' support for the Democratic incumbent, J.A. 14, 61-62, and without any act of disloyalty on the part of Mills, "concluded that [he] could not trust Mills." J.A. 63. Sheriff Meadows then confronted Mills and accused him of being a close personal friend and confidant of his Democratic predecessor. J.A. 105. Having "determined that there was no place for Mills ... and that he would not be a happy and supportive deputy," *id.*, Sheriff Meadows ultimately told Mills "that there is no place you will fit into the organization and I am letting you go." J.A. 106. Based upon Sheriff Meadows' order that he vacate the office immediately, Mills reluctantly complied with that order and, after 23 years of dedicated service, was terminated from the Harford County Sheriff's Office. *Id.*

Rather than dispute his political motivation for terminating Mills, Sheriff Meadows provided an Affidavit confirming it. J.A. 57-69. According to Sheriff Meadows, immediately after being sworn into office, he met with his subordinates to determine "their reaction to my election." J.A. 60. Before obtaining Mills' reaction, Sheriff Meadows "explained to Mills that [he] was unsure what his future status with the office would be." *Id.* Indeed, Sheriff Meadows admits that he was quite concerned about Mills' close political ties to his predecessor:

I knew Mills was a devoted supporter of Comes

> and Comes' bid for re-election. ... Mills had hosted a political fundraising event for Comes at the private swim and golf club owned by Mills. Mills had placed a billboard-size sign at the entranceway to the club which supported Comes' re-election bid. I saw Mills outside of Comes' campaign headquarters on the night of the Democratic primary when Comes defeated the Democratic challengers for Sheriff. I knew Mills to be an ardent Comes supporter.

J.A. 61. Justifying this politically-motivated dismissal, Sheriff Meadows informed the lower courts that he "had a reasonable basis to distrust Mills, who was one of two deputies who orchestrated the campaign for re-election of Meadows' opponent, Comes, and could reasonably be expected to do whatever was within his power to make Meadows' term in office unsuccessful so that Comes could mount a challenge to Meadows' candidacy at the next election." J.A. 46-47.

Contrary to these paranoid predictions, Mills fully intended to serve the new sheriff with undivided loyalty. As he had done under five previous administrations, Mills informed Sheriff Meadows that he "was ready, willing and able to serve with similar diligence and distinction under his administration." J.A. 107. Even as Sheriff Meadows fired him, Mills "never expressed any reluctance to serve him loyally." J.A. 108.

Though Sheriff Meadows' affidavit shows that Mills' political support and allegiance to his predecessor played a substantial and decisive role in his ultimate termination, *see* J.A. 63 (justifying Mills' termination on basis of his "loyalty to Comes"), Mills did not play a policymaking role within the Comes' administration and his political affiliation and activity

never had any bearing on his duties or fitness for office. J.A. 105-06. Moreover, Mills "never held a position based upon political appointment or patronage." J.A. 108. While Mills supported Comes' reelection bid, he never conducted any type of political activity during business hours or otherwise while on the job, *id.*, and there is no suggestion in the record that Mills conducted any type of political activity at any time following the election.

Deprived of a career which he held proudly for 23 years, Mills filed an eleven count Complaint seeking reinstatement to his previous job, compensation for lost wages and compensatory and punitive damages arising out of, *inter alia*, Sheriff Meadows' violation of his First Amendment rights. J.A. 5-26. In response to these claims, Harford County moved to dismiss this case and Sheriff Meadows filed a Motion for Dismissal/Summary Judgment. J.A. 27-33; 34-56.

Despite pleadings and affidavits confirming the politically-motivated dismissal of Mills, the District Court disregarded Mills' First Amendment rights by entering summary judgment for both of these defendants on April 16, 1998. A-7-16. While recognizing the protected nature of Mills' political activity, the District Court gave Sheriff Meadows carte blanche to dismiss him for political reasons. *See id.* In so doing, the District Court blatantly ignored First Amendment interests which this Court has long protected.

Although this Court has long held that politically-motivated dismissals may only be justified where "the hiring authority can demonstrate that party affiliation is an appropriate requirement for the effective performance of the public office involved," *Branti v. Finkel*, 445 U.S. 507, 518 (1980); *Elrod v. Burns*, 427 U.S. 347 (1976), the District Court refused to

impose this burden on Sheriff Meadows. Instead, it echoed the Fourth Circuit's departure from this Court's standards by blindly asserting "that political affiliation 'serves as a proxy for loyalty to the sheriff,' and that loyalty is an appropriate job requirement." A-8. Thus, while this Court demands proof of impaired performance, the District Court found that, regardless of a deputy's function, political affiliation will always justify termination. *See id.*

Beyond political affiliation, the District Court also disregarded Mills' right to campaign for the candidate of his choice. Giving lip service to this Court's decisions in *Pickering v. Board of Educ. Of Township High School Dist. 205*, 391 U.S. 563 (1983), and *Connick v. Myers*, 461 U.S. 138 (1983), the lower court conceded that "[t]here is no question that in this case Mills engaged in speech involving a matter of public concern." A-10. Although it is virtually impossible to understand how Mills' *pre-election* political activity could have impaired the efficiency of Sheriff Meadows' office, the District Court permitted him to fire Mills without any evidence of dissent, disruption or disloyalty. *Id.* Lacking such evidence, the District Court held that Sheriff Meadows' speculative concerns about "the effective and efficient fulfillment of the responsibilities of the Sheriff's Office outweighed Mills' interest in exercising his First Amendment rights." *Id.*

Wishing to redress Sheriff Meadows' and the District Court's disregard for First Amendment rights, Mills appealed the District Court's decision on May 14, 1998. J.A. 160. Unfortunately, the Court of Appeals disregarded this Court's holdings even more than the District Court and widened a growing split in the Circuits over the proper method of analyzing cases involving alleged dismissals on the basis of both political affiliation and political expression. While the

District Court at least acknowledged the holdings of *Pickering* and *Connick* before departing from established law, the Court of Appeals never even mentioned these landmark decisions and failed to address First Amendment protections for Mills' campaign activity. *See generally* A-1-6. In failing to conduct this analysis, the Court of Appeals not only departed from established law, it split from other Circuits who continue to conduct this analysis. *Id.*

Although the Court of Appeals acknowledged the existence of this Court's decisions in *Elrod* and *Branti*, it ignored these holdings, failed to analyze whether political affiliation related to job performance, and vested the Sheriff with the unfettered discretion to fire subordinates from other political parties. *Id.* While the Court of Appeals may feel that an "unpublished opinion" permits it to exercise poetic license on the law, the lower courts' opinions sharply conflict with this Court's First Amendment analysis, split from several circuits who continue to follow this Court's mandate, and impermissibly dilute the most fundamental of our constitutional freedoms.

REASONS FOR GRANTING THE WRIT

Although this Court has long "conclude[d] that policemen, like teachers and lawyers, are not relegated to a watered-down version of constitutional rights," *Garrity v. New Jersey*, 385 U.S. 493, 500 (1967), the Court of Appeals has effectively eliminated these rights while accentuating a split in the circuits that leaves law enforcement officers subject to different levels of protection in different states. In campaigning on behalf of Sheriff Comes, Mills hardly committed a crime for which he should be punished with the loss of his career. Instead, this president of the Harford County Democratic Club

exercised one of the most clearly established rights in the United States Constitution. As this Court observed in the landmark decision of *Buckley v. Valeo*, 424 U.S. 1, 14 (1976), *quoting Roth v. United States*, 354 U.S. 476 (1957), "[d]iscussion of public issues and debate on the qualifications of candidates are integral to the operation of the system of government established by our Constitution. The First Amendment affords the broadest protection to such political expression in order 'to assure [the] unfettered interchange of ideas for the bringing about of political and social changes desired by the people.'"

Without making any exception for law enforcement officers, the First Amendment was primarily designed to protect every citizen's right to participate fully in the electoral process:

> As Madison observed in 1800, just nine years after ratification of the First Amendment: "Let it be recollected, lastly, that the right of electing the members of the government constitutes more particularly the essence of a free and responsible government. The value and efficacy of this right depends on the knowledge of the comparative merits and demerits of the candidates for public trust, and on the equal freedom, consequently, of examining and discussing these merits and demerits of the candidates respectively."

Harte-Hanks Comm., Inc. v. Connaughton, 491 U.S. 657, 687 (1989), *quoting* 4 J. Elliot, Debates on the Federal Constitution 575 (1861).

Beyond the expression inherent in campaign activity, the First Amendment guarantees to citizens like Mills the right to engage in whatever political affiliations suit them. The right to associate in order to express one's views is "inseparable" from the right to speak freely. *Thomas v. Collins*, 323 U.S. 516, 530 (1945). The "right of free association [is] a right closely allied to freedom of speech and a right which, like free speech, lies at the foundation of a free society." *Shelton v. Tucker*, 364 U.S. 479, 486 (1960); *Roberts v. U.S. Jaycees*, 468 U.S. 609, 622 (1984)("implicit in the right to engage in activities protected by the First Amendment [is] a corresponding right to associate with others in pursuit of a wide variety of political ... ends").

Considering the vital importance of such political activity, it has long been established that government officials "may not condition public employment on an employee's exercise of his or her First Amendment rights." *O'Hare Truck Service, Inc. v. City of Northlake*, 518 U.S. 712, 116 S. Ct. 2353, 2356 (1996), *citing Keyishian v. Board of Regents*, 385 U.S. 589 (1967); *Pickering v. Board of Educ. of Township High School Dist. 205*, 391 U.S. 563 (1968). "[I]f the government could deny a benefit to a person because of his constitutionally protected speech or associations, his exercise of those freedoms would in effect be penalized and inhibited. That would allow the government to 'produce a result which [it] could not command directly.' Such interference with constitutional rights is impermissible.'" *Perry v. Sindermann*, 408 U.S. 593, 597 (1972).

While the lower courts would prefer to ignore it, one does not lose these constitutional rights upon becoming a law enforcement officer. Neither Sheriff Meadows nor any other government official may condition a law enforcement officer's

job on loyalty oaths, political expression, campaign activity or political affiliation. Simply put, even the mere "'threat of dismissal for failure to provide [support for the favored political party] unquestionably inhibits protected belief and association, and dismissal for failure to provide support only penalizes its exercise.'" *O'Hare Truck Service* , 116 S. Ct. at 2357 (brackets in original), *quoting Elrod v. Burns*, 427 U.S. 347, 359 (1976). By giving sheriffs and police chiefs the absolute discretion to penalize these rights by terminating political opponents, the lower courts have engaged in an unconstitutional campaign of their own which this Court must address.

I. THE LOWER COURTS ARE IGNORING THE FIRST AMENDMENT BY PROVIDING SHERIFFS WITH THE UNRESTRICTED POWER TO TERMINATE MEMBERS OF OTHER POLITICAL PARTIES

Contrary to the lower courts' conclusions, Sheriff Meadows may not justify his termination of Mills on the basis of his political affiliation and active support of an opposing political party. Although neither court actually applied this Court's holding in *Branti*, "the ultimate inquiry is not whether the label 'policymaker' or 'confidential' fits a particular position; rather, the question is whether the hiring authority can demonstrate that party affiliation is an appropriate requirement for the effective performance of the public office involved." 445 U.S. at 518.

Rather than require Sheriff Meadows to follow this law and demonstrate that Mills' party affiliation was an appropriate requirement for the effective performance of his job, these courts refused to analyze this issue, summarily rejected Mills'

contentions to the contrary, and would not even permit discovery on the nature of his responsibilities. Instead, the trial judge echoed the Court of Appeals' earlier departures from this Court's standards by blindly asserting "that political affiliation 'serves as a proxy for loyalty to the sheriff,' and that loyalty is an appropriate job requirement." Confirming that politics may always justify dismissals regardless of a deputy's function, the Court of Appeals affirmed this holding by arguing that such deputies are "alter egos" of sheriffs whose very election provides the unrestrained power to fire those from another party – regardless of whether politics plays a role in their jobs.

Not only do these holdings ignore that of *Branti*, they fly in the face of this Court's decision in *Elrod*. Under facts quite similar to those confronting the lower courts, a plurality of this Court upheld a deputy sheriff's right to sue for dismissals based upon political affiliation. *Elrod*, 427 U.S. 347. There, several deputies alleged that Sheriff Elrod fired them because they were affiliated with a different political party and did not support his election efforts. Although Sheriff Elrod moved to dismiss these claims, this Court held that such politically-motivated dismissals are "unconstitutional under the First and Fourteenth Amendments" and that these deputies "stated a valid claim for relief." *Id.* at 373.

Here, Sheriff Meadows has admitted in his own Affidavit that he dismissed Mills for the very same reasons articulated by Sheriff Elrod. *See* J.A. 57-69. Although Mills remained the president of the Harford County Democratic Club even after the election, Sheriff Meadows has failed to show that this political affiliation had any bearing on his fitness for duty. In fact, Sheriff Meadows even admitted that party affiliation was not an appropriate requirement for Mills' job, claiming that, even in the case of upper level command positions, party

"affiliation had absolutely nothing to do with who I appointed." J.A. 63. Based upon these admissions, Sheriff Meadows cannot legitimately justify his termination of Mills on the basis of such political considerations as party affiliation. Yet, in departing from *Elrod* and *Branti*, the lower courts never required that Sheriff Meadows justify his decision to terminate Mills and held that politics will always prevail. Because this perversion of the law blatantly undermines the First Amendment and actually invites its violation, this Court should intervene.

II. WHILE SOME CIRCUITS HAVE FOLLOWED THIS COURT'S MANDATE IN *ELROD* AND *BRANTI*, OTHERS HAVE DISREGARDED THE FIRST AMENDMENT BY PERMITTING WIDESPREAD POLITICAL DISMISSALS

The Court of Appeals' latest departure from this Court's analytical framework solidifies a split in the Circuits which leaves law enforcement officers' First Amendment rights in an uncertain posture and which "cries out for elucidation from the Supreme Court in some appropriate future case." *Cutcliffe v. Cochran*, 117 F.3d 1353, 1361 (11th Cir. 1997). While this Court has yet to examine this disturbing trend, the time has come to clarify and to reaffirm the political freedoms guaranteed by the First Amendment.

Law enforcement officers should not be required to "check their local listings" before registering with a political party. This is particularly true where, as here, political affiliation has nothing to do with the officers' duty to protect the public. Yet, in five Circuits, law enforcement officers have greater freedom to register with the party of their choice than do those officers who protect the public in the Fourth, Seventh

and Eleventh Circuits. While the Fourth, Seventh and Eleventh Circuits have provided sheriffs with the unfettered discretion to dismiss deputies from another party, *see Upton v. Thompson*, 930 F.2d 1209 (7th Cir. 1991), *cert. denied*, 503 U.S. 906 (1992); *Terry v. Cook*, 866 F.2d 373 (11th Cir. 1989), the Third, Fifth, Sixth, Ninth and Tenth Circuits have placed limits on such politically-motivated dismissals. In these Circuits, judges have followed *Branti* by examining the plaintiff's actual job responsibilities and determining whether political affiliation is an appropriate job requirement. *See, e.g., Burns v. County of Cambria, Pennsylvania*, 971 F.2d 1015 (3d Cir. 1992), *cert. denied*, 506 U.S. 1081 (1993); *Brady v. Fort Bend County*, 58 F.3d 173 (5th Cir. 1995); *Barrett v. Thomas*, 649 F.2d 1193 (5th Cir. 1981), *cert. denied*, 456 U.S. 925, 936 (1982); *Hall v. Tollett*, 1997 WL 651344 (6th Cir. Oct. 22, 1997); *Thomas v. Carpenter*, 881 F.2d 828 (9th Cir. 1989), *cert. denied*, 494 U.S. 1028 (1990); *Dickeson v. Quarberg*, 844 F.2d 1435 (10th Cir. 1988).[1]

Even in those Circuits which have departed from the need to analyze job requirements and have permitted unchecked political dismissals, judges have repeatedly called for this Court's guidance on the appropriate level of analysis. For example, in *Cutcliffe*, 117 F.3d 1353 (11th Cir. 1997), the author of the panel's decision reluctantly ruled against the plaintiff on the basis of controlling precedent in the Eleventh Circuit, but called for en banc review because he deemed the precedent inconsistent with *Branti*. According to that jurist, "confusion in applying the *Elrod-Branti* standard is not surprising as there appears to be a conflict among the circuits

---

[1] District courts in two other Circuits have also allowed deputy sheriffs to maintain these claims. *See Baum v. Webb*, 863 F. Supp. 918 (E.D. Ark. 1994); *AFSCME v. Morse*, 812 F. Supp. 278 (D.N.H. 1993).

in patronage cases arising in sheriff's offices." *Id.* at 1357. Furthermore, the Fourth Circuit's earlier en banc decision in *Jenkins v. Medford*, 119 F.3d 1156, 1171 (4th Cir. 1997), *cert. denied*, 118 S. Ct. 881 (1998), involved a vehement dissent which expressed disbelief at "those courts that have improperly attempted to limit the *Elrod-Branti* holding." Contrary to the speculative concerns for government efficiency expressed by the majority, this dissenter warned of even more serious considerations: "Only time will tell the extent that the resulting loss of First Amendment freedoms ... will ... 'handicap[] and impede[] law enforcement' efforts." *Id.* (brackets in original).

Without this Court's guidance, time has continued to dilute the First Amendment rights of law enforcement officers as the Circuits continue to debate the appropriate level of analysis and officers must check the local law before registering to vote. Under these circumstances, this Court must clarify for all law enforcement officers the state of the law in all states.

III. BY IGNORING THE PROTECTIONS WHICH THIS COURT ESTABLISHED IN *PICKERING* AND *CONNICK*, THE COURT OF APPEALS HAS OPENED THE DOOR TO DISMISSALS DESIGNED TO PUNISH POLITICAL DISSENT

Where, as here, a plaintiff alleges that "a government employer take[s] adverse action on account of an employee or service provider's right of free speech," courts must apply the test outlined by the Supreme Court in a line of cases following *Pickering v. Board of Educ. of Township High School Dist. 205*, 391 U.S. 563 (1968) and *Connick v. Myers*, 461 U.S. 138 (1983). *O'Hare Truck Service*, 116 S. Ct. at 2357-58. Unfortunately, the Court of Appeals did not even acknowledge

the existence of these cases and failed to apply this Court's test for when an employee may be discharged in connection with the exercise of First Amendment rights.

Under this test, the lower courts should have first determined whether Mills' First Amendment activity focused on a matter of "public concern." *Id.* at 147-48. If so, these courts should have balanced "the interests of the [employee], as a citizen, in commenting upon matters of public concern and the interest of the State, as an employer, in promoting the efficiency of the public services it performs through its employees." *Pickering*, 391 U.S. at 568. Should the employer fail to prove an interest sufficiently monumental so as to outweigh the fundamental First Amendment interests of the citizen, he may not take any action adversely affecting the citizen's employment on that basis. *Id.*

By failing to apply this two-part test, the Court of Appeals joined Sheriff Meadows in ignoring Mills' First Amendment rights. After applying the *Pickering-Connick* test to Mills' activities, one could hardly justify any adverse job action taken in response to these activities. First, in campaigning on behalf of the Democratic incumbent, Mills engaged in political expression of such monumental public concern that it lies at the very heart of the First Amendment. *Buckley*, 424 U.S. at 14; *Roth*, 354 U.S. at 484; *Harte-Hanks Comm.*, 491 U.S. at 687.[2] Second, this citizen's interest in

---

[2] Amazingly, the Court of Appeals refused to follow *Pickering* and *Connick* in connection with Mills' political campaign activity, but has applied these safeguards to prohibit adverse job actions on the basis of expression subject to even less constitutional protection than that of Mills. Expressly recognizing that "entertainment ranks lower on the scale of first amendment values than does pure political debate," the Court of Appeals prohibited the Baltimore City Police Department from taking adverse action

commenting upon matters of grave public concern far outweighs any dubious interest which his employer may have to censor it. Under the facts of this case, it is difficult, if not impossible, to determine how Mills' *pre-election* political activities could have impaired the efficiency of Sheriff Meadows' office. While Sheriff Meadows complained about Mills' support for his opponent prior to his election, he failed to produce any evidence showing that this employee expressed any dissent or disruption of any kind after Sheriff Meadows took office. Indeed, Mills himself stated that he was fully prepared, as a professional law enforcement officer, to serve Sheriff Meadows with the same degree of loyalty which he had exhibited on behalf of five previous sheriffs. J.A. 106-07. Because Sheriff Meadows has failed to prove a compelling state interest, or *any* interest, outweighing this citizen's First Amendment rights, he cannot legitimately claim a right to terminate Mills for the exercise of political activity which did not even encroach into the period of his administration.[3]

---

against a law enforcement officer who performed an Al Jolson imitation wearing a "black-face" disguise. *Berger v. Battaglia*, 779 F.2d 992, 999 (4th Cir. 1985). According to the *Berger* court, even this type of expression deserved protection under a *Pickering-Connick* analysis. *Id.* Having refused to deny law enforcement officers "the full panoply of first amendment rights enjoyed by all citizens," *id.* at 1000, the Court of Appeals established Officer Berger's right to engage in such expression without fear of adverse consequences. *Id.* Considering the fact that such "lower-ranked" entertainment acts command such protection, Mills' right to engage in activities placed at the very top of the First Amendment scale is beyond question.

[3] Lacking such evidence, the District Court attempted to justify its decision on the basis of a Fourth Circuit opinion which only served to underscore the violation at issue. In *Joyner v. Lancaster*, 815 F.2d 20 (4th Cir. 1987), this Court upheld the dismissal of one of the top three officials in the sheriff's office who actively campaigned against the *incumbent*

Without any evidence of actual disruption, and without relating party affiliation to Mills' specific job responsibilities, Sheriff Meadows speculates on the possibility of future disruption at the hands of Mills. In his motion to the District Court, Sheriff Meadows sought to justify this dismissal on grounds of sheer paranoia:

> Mills was a devoted supporter of Meadows' predecessor, and Meadows had a reasonable apprehension that Mills might seek to undermine Meadows' efforts to change the way in which the office was managed. Meadows also had a reasonable basis to distrust Mills, who was one of two deputies who orchestrated the campaign for re-election of Meadows' opponent, Comes, and could reasonably be expected to do whatever was within his power to make Meadows' term in office unsuccessful so that Comes could mount a challenge to Meadows' candidacy at the next election.

J.A. 46-47. Absent any concrete evidence supporting Sheriff Meadows' paranoid predictions, such paranoia could hardly

---

sheriff, threatening the job security of his subordinates and causing immediate and direct "disruption and antagonisms" within the office. *Id.* at 24. Unlike Sheriff Meadows, Sheriff Lancaster produced substantial evidence that his major's campaign activity during his own administration was wreaking havoc within his office and was impairing the efficiency of his operation. *Id.* By contrast, the record in this case is currently devoid of any activity which would, in the slightest degree, be construed as disruptive to Sheriff Meadows' office or policies. *See* J.A. 108. Here, there is absolutely no evidence that Mills ever spoke ill of Sheriff Meadows, either during or after the campaign, or ever did anything to interfere with Sheriff Meadows' job.

justify dismissing an individual for actively participating in the political process.

By failing to conduct the analysis mandated in *Pickering* and in *Connick*, the Court of Appeals has placed paranoia above the Constitution by eliminating the need for employers to prove any interest which effectively competes with fundamental First Amendment rights. Because government officials in the Fourth Circuit may now discharge subordinates without any legitimate, let alone compelling, interest to justify it, law enforcement officers within this jurisdiction may only exercise these rights at the risk of their careers.

IV. THIS COURT SHOULD ELIMINATE GROWING CONFUSION AMONG THE CIRCUITS OVER THE APPLICATION OF THE *PICKERING-CONNICK* TEST

Although this Court recently reaffirmed the need to apply the *Pickering-Connick* balancing test when analyzing terminations based upon campaign activities and speech, *O'Hare*, 116 S. Ct. at 2357-58, the Court of Appeals has joined four other Circuits who have either failed to apply this test or ignored it entirely. *See, e.g., Rodriguez Rodriguez v. Munoz Munoz*, 808 F.2d 138, 144 (1st Cir. 1986); *McEvoy v. Spencer*, 124 F.3d 92 (2d Cir. 1997); *Warzon v. Drew*, 60 F.3d 1234 (7th Cir. 1995); *Cutcliffe*, 117 F.3d 1353. These courts have eliminated the distinction between dismissals based upon party affiliation and those based upon political expression, thereby limiting the additional safeguards applicable in the latter case. In each of these courts, judges have disregarded the protections for political expression articulated in *Pickering* and *Connick* and have relegated law enforcement officers to the more narrow

test where terminations involve questions of party affiliation alone. *See Branti*, 445 U.S. 507.

In sharp contrast with courts who have refused to balance First Amendment interests with those of the employer, others have followed this Court's mandate that dismissals only be made where compelling interests justify them. *See, e.g., Voivodich v. Lopez*, 48 F.3d 879, 884 (5th Cir.), *cert. denied*, 116 S. Ct. 169 (1995); *Morris v. Crow*, 117 F.3d 449 (11th Cir. 1997). In fact, one court, the Eleventh Circuit, has actually created a schizophrenic split within its own ranks. As the Eleventh Circuit observed in one of its opinions, "It is important to retain the distinction between political patronage cases and free expression cases, because the analysis applicable to the types of cases is markedly different." *Id.*

Under circumstances even less compelling that those presented by Mills, in *Stough v. Gallagher*, 967 F.2d 1523 (11th Cir. 1992), a high ranking deputy claimed that the sheriff retaliated against him due to his "association with and political speech in support of [the sheriff's] opponent." *Id.* at 1524. Although the sheriff urged the Court to limit its analysis to the *Elrod-Branti* test governing political affiliation issues, the Eleventh Circuit refused to apply that test alone. According to that Circuit, the "action of demoting [plaintiff] for political speech and campaigning activities for the opposition is appropriately viewed under the speech category and analyzed using the *Pickering-Connick-Rankin* test." *Id.* Yet, in Mills' case, where allegations of political retribution are virtually identical,[4] the Fourth Circuit's analysis – and ultimate

---

[4] In fact, Mills presented an even stronger case than Stough because the latter campaigned against an incumbent sheriff, where theories of potential disruption to an ongoing operation may be stronger. By

conclusion – is markedly different.

At bottom, in cases where deputies are allegedly discharged both on the basis of their political affiliations and on the basis of their political expression and campaign activities, the Circuits are completely confused over whether to apply the analysis of *Elrod-Branti*, *Pickering-Connick*, or both. With differing levels of First Amendment analysis, law enforcement officers have not been able to enforce their own rights to the same extent in all states. Because officers everywhere should enjoy the same First Amendment rights, this Court should step in to guide the Circuits toward a uniform application of its earlier principles.

CONCLUSION

Although this Court has long protected the First Amendment rights of law enforcement officers, many sheriffs, police chiefs and Courts of Appeal have not. As the lower courts continue to struggle with differing methods of analysis in cases of dismissals based upon political affiliation, expression and campaign activity, the divergent conclusions which they have reached leave law enforcement officers subject to varying levels of First Amendment protection in different states. Because all of these officers are vested with the same duty to protect the public in all states, their own constitutional protection should not vary from state to state. For this reason, Petitioner Marlin Lee Mills respectfully requests that this Court

---

contrast, Mills supported an incumbent and, following the election, never voiced any opposition to the newly-elected sheriff. *See* J.A. 108.

grant the petition for writ of certiorari.

Respectfully submitted,

Irwin R. Kramer
KRAMER & ASSOCIATES
Counsel of Record
Suite 230
11403 Cronridge Drive
Owings Mills, Maryland 21117
(410) 581-1391

Attorney for Petitioner

APPENDIX

UNITED STATES COURT OF APPEALS
FOR THE FOURTH CIRCUIT

Marlin Lee Mills	*	
Appellant	*	
v.	*	No. 98-1704
Joseph P. Meadows, *et al.*	*	
Appellees	*	

* * * * * * * * * * * * * * *

Appeal from the United States District Court

Argued: June 10, 1999 .
Decided: July 22, 1999

Before MURNAGHAN, WILKINS and HAMILTON, Circuit Judges.

Affirmed by unpublished per curiam opinion.

OPINION

PER CURIAM:

Marlin Lee Mills appeals an order of the district court granting summary judgment to Joseph P. Meadows, Sheriff of

Harford County, Maryland,[1] on Mills' claims that Meadows terminated him in violation of his constitutional rights to free speech and due process. Because we conclude that Meadows was entitled to terminate Mills on the basis of the latter's political affiliation and that Mills was not entitled to a pretermination hearing, we affirm.

I.

The facts, viewed in the light most favorable to Mills, are as follows. Mills began employment with the Harford County Sheriff's Office in 1971 as an entry-level deputy. Over the course of the next 20 years, he received several promotions. In January 1994, then-Sheriff Robert Comes promoted Mills to the position of captain. As a captain, Mills was equaled or exceeded in rank by only ten officers, including the sheriff, in a 230-person office.

In 1994, Sheriff Comes, a Democrat, ran for reelection against Meadows, a Republican. At the time of the campaign, Mills was the president of the Harford County Democratic Club. Additionally, he actively supported Comes' candidacy by hosting a fundraiser at his private swim and golf club and by posting a large campaign sign at the entrance to the club. These efforts were unavailing, however, and Meadows was elected Sheriff in November, 1994.

Shortly after his election, Meadows met individually with each member of the upper-level command staff. During

---

[1] Mills also named Harford County as a defendant in this action. Because the County's liability, if any, is derived solely from Meadows' actions in his official capacity, we will refer to Appellees collectively as "Meadows" throughout this opinion.

his meeting with Mills on December 6, 1994, Meadows asked about Mills' relationship with Comes and indicated that he understood Mills to have been Comes' "right hand man." J.A. 105. Mills disputed this characterization of his position in the office and asserted that he was willing to serve Meadows as sheriff. Meadows stated that he did not know where Mills would fit into his organization, if anywhere, and that he would make a decision in the near future. Thereafter, Meadows conducted an informal investigation during which he was informed that no member of the upper-level command staff wanted to work with Mills and that many lower-level deputies had "expressed concerns about Mills' police and command acumen." J.A. 63. Approximately two weeks after their initial meeting, Meadows again met with Mills and informed him that he would be terminated if he did not resign. Later that day, Mills took early retirement effective January 1, 1995.[2]

Mills subsequently filed this action pursuant to 42 U.S.C.A. § 1983 (West Supp. 1999), alleging that Meadows terminated him based upon his political affiliation and campaign activities in violation of the First Amendment. Mills further claimed that Meadows violated the Fourteenth Amendment guarantee of procedural due process by firing him without providing a pretermination hearing. Additionally, Mills raised a claim of conspiracy under 42 U.S.C.A. § 1985 (West 1994), asserted that his termination violated substantive

---

[2] The employment action to which Mills was subjected has been characterized variously in the record as a termination, a failure to rehire, and a forced retirement. The nomenclature employed makes no difference for purposes of our analysis; the salient point is that Mills left his employment involuntarily. *See Branti v. Finkel*, 445 U.S. 507, 512 n.6 (1980). Throughout this opinion, we will refer to Mills as having been terminated.

due process, and stated several state-law claims. Prior to discovery, the district court granted summary judgment to Meadows on the federal claims, *see* Fed. R. Civ. P. 56, and declined to exercise jurisdiction over the state-law claims, *see* U.S.C.A. § 1367(c)(3) (West 1993). On appeal, Mills challenges the grant of summary judgment on his First Amendment and procedural due process claims. We review the decision of the district court de novo. *See Higgins v. E.I. DuPont de Nemours & Co.*, 863 F.2d 1162, 1167 (4th Cir. 1988).

II.

Our analysis of Mills' First Amendment claim is controlled by our en banc decision in *Jenkins v. Medford*, 119 F.3d 1156 (4th Cir. 1997) (en banc), *cert. denied*, 118 S. Ct. 881 (1998). In *Jenkins*, we considered the claims of several deputy sheriffs who were fired by the newly elected sheriff of Buncombe County, North Carolina. The deputies, all of whom had supported the sheriff's political opponents during the campaign, alleged that they had been terminated in violation of their First Amendment rights. *See id.* at 1158-59. We held that the deputies' claims should be analyzed under the line of Supreme Court precedent established by *Elrod v. Burns*, 427 U.S. 347 (1976), and *Branti v. Finkel*, U.S. 507 (1980). *See Jenkins*, 119 F.3d at 1160-61. Under *Elrod* and *Branti*, an employee may not be terminated solely on the basis of political affiliation, *i.e.*, merely because he belongs to a different political party or faction than his employer, unless the employer "can demonstrate that party affiliation is an appropriate requirement for the effective performance of the public office involved." *Branti*, 445 U.S. at 518; *see Elrod*, 427 U.S. at 355-60, 367 (plurality opinion); *id.* at 375 (Stewart, J., concurring in the judgment).

In determining whether a sheriff in North Carolina could terminate deputy sheriffs based on political affiliation, we considered "the specific political and social roles of sheriffs and their deputies in North Carolina" and noted that sheriffs in that state are "important political figure[s]" who are responsible for implementing a political agenda that has been approved by the voters through the sheriff's election. *Jenkins*, 119 F.3d at 1163. Moreover, we observed that in North Carolina, a deputy sheriff is the alter ego of the sheriff, who can be held liable for a deputy's misconduct. Based upon these considerations, we held that party affiliation was an appropriate requirement for the office of deputy sheriff in North Carolina; therefore, the sheriff did not violate the First Amendment rights of the deputies in terminating them. *See id.* at 1164.[3]

Jenkins is dispositive of Mills' claims that his dismissal violated his constitutional rights. In Maryland, as in North Carolina, a deputy sheriff is the alter ego of the sheriff. *See Rucker v. Harford County, Md.*, 558 A.2d 399, 402, 406 (Md. 1989). Additionally, Mills was a high-ranking official — in a department of 230 people, he was one of only seven captains and was exceeded in rank by only four officers, including the sheriff himself. Furthermore, at the time of his discharge Mills was an at-will employee. Because Mills' position is essentially indistinguishable from the position occupied by the deputy sheriffs whose claims we considered in *Jenkins*, that case compels a conclusion that Meadows was entitled to terminate Mills on the basis of his political affiliation. Accordingly, we affirm the grant of summary judgment to Meadows on this claim.

---

[3] We limited our holding, however, "to those deputies actually sworn to engage in law enforcement activities on behalf of the sheriff." *Id.* at 1165.

III.

Mills next contends that the district court erred in rejecting his claim that he was deprived of procedural due process when Meadows terminated him without first providing a hearing. Mills bases this claim on a provision of the Maryland Law Enforcement Officers' Bill of Rights (LEOBR) which states that a law enforcement officer is entitled to a hearing if "investigation or interrogation of [the] law enforcement officer results in the recommendation of ... dismissal." Md. Ann. Code art. 27, § 730(a) (Supp. 1998).

We affirm the grant of summary judgment to Meadows on this issue because Mills was not entitled to a pretermination hearing under the LEOBR. The procedural protections of the LEOBR apply "only when [an] officer is investigated and/or interrogated as a result of a disciplinary-type complaint lodged against the officer." *Calhoun v. Commissioner, Baltimore City Police Dep't*, 654 A.2d 905, 911 (Md. Ct. Spec App. 1995). Here no, complaint was ever lodged against Mills.

IV.

For the reasons et forth above, we conclude that the district court correctly granted summary judgment to Meadows on Mills' First Amendment and procedural due process claims.[4] Accordingly, we affirm.

AFFIRMED

---

[4] In view of our disposition of the merits of the appeal, we need not consider Harford County's claim that it is not a proper party to this action.

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF MARYLAND

Marlin Lee Mills	*	
Plaintiff	*	
		Civil Action No.:
v.	*	JFM-97-3329
Joseph P. Meadows, *et al.*	*	
Defendants	*	

* * * * * * * * * * * * * * *

OPINION

Marlin Lee Mills has brought this action against Sheriff Joseph P. Meadows and Harford County, Maryland ("Harford County"). Mills claims that his employment as a deputy sheriff was terminated in violation of the First and Fourteenth Amendments to the United States Constitution and parallel provisions of the Maryland Constitution. He also asserts several common law tort claims. Meadows has moved to dismiss the complaint, or, in the alternative, for summary judgment. Harford County has also filed a motion to dismiss.[1] For the reasons that follow, I will grant summary judgment in favor of defendants as to Mills' federal claims and dismiss his state law claims pursuant to 28 U.S.C. § 1367(c)(3).

---

[1] Because I am considering matters outside the pleadings in resolving the issues presented, I will treat Harford County's motion as one for summary judgment in accordance with Federal Rule of Civil Procedure 12(b).

I.

Mills joined the Harford County Sheriff's Office in 1971 as an entry level deputy sheriff. Over the years, Mills was promoted to the rank of deputy first class, corporal, sergeant, lieutenant, and finally captain. Mills received his last two promotions during the administration of Sheriff Robert Comes, who was elected in 1990.

In the 1994 general election Comes, a Democrat, was opposed by Meadows, the Republican candidate. Mills, as president of the Harford County Democratic Club, actively supported the Comes campaign, hosting a fundraising event on Comes' behalf at the private swim and golf club he owns and displaying Comes' campaign sign at the club. Meadows defeated Comes in the November 1994 general election and was sworn into office as Sheriff of Harford County on December 5, 1994.

Meadows has submitted an affidavit describing the background of the 1994 election as follows:[2]

> From his election in 1962 until his retirement in 1981, William J. Kunkel ("Kunkel") has been the Sheriff of Harford County, and the office enjoyed stability.

---

[2] Mills has submitted his own affidavit denying he had any involvement in alleged mismanagement of the detention center or the Sheriff's Office as a whole. However, he has not disputed Meadows' general description of what lead to Meadows' election. In any event, factual disputes as to how well the Sheriff's Office was being managed are to be decided by the electorate, not by the courts. What is pertinent here is that Meadows could property interpret the outcome of the election as a mandate for change, imposing upon him the responsibility to put in place a management team that could effect that change.

Following Sheriff Kunkel's retirement, there were two one-term Sheriffs: Theodore Moyer ("Moyer") (who was appointed Sheriff upon Kunkel's retirement and elected in the 1982 general election) and Dominick Mele ("Mele") (who defeated Moyer in the 1986 Democratic primary and won the general election unopposed). Robert Comes ("Comes") ran unopposed (after Mele lost the democratic [sic] primary, he was a write-in candidate, but received very few votes, not being on the ballot) and was elected Sheriff in the1990 general election, having defeated Mele in the 1990 Democratic primary.

Prior to the 1994 general election, morale among the deputies was at an all time low since I had been working as an Assistant State's Attorney. Deputies were constantly complaining to me that they believed that Comes and his upper level command staff were incompetent and that the office was being mismanaged. The Sheriff's Office received considerable negative press coverage as the result of an incident at the detention center, and many deputies were unhappy about the negative public image resulting from the incident and the way the Sheriff handled the incident. A number of deputies and groups of deputies approached me about running for Sheriff in the 1994 elections. I was not approached by representatives of the Republican party to run for Sheriff as the Republican candidate. My candidacy received support within the Sheriff's Office from both Democratic and Republican deputies. Party affiliation had no significant role with respect to support of my candidacy.

When Meadows took office there were approximately 230 deputies working under his command. Of this group, the only people of equal or higher rank than Mills were Meadows himself, his chief deputy, one major, one warden, and six other captains. On December 6 and 7, 1994, Meadows met with most of the members of his upper level command staff, and with most of his lieutenants and sergeants. Meadows met with Mills on December 6, 1994. On December 19, 1994, Meadows informed Mills that he had decided not to reappoint him as a deputy in his administration.

Mills alleges that he was removed from the Harford County police force because of his political association with and campaign activity on behalf of Comes. He maintains that he had served effectively under five separate administrations and that he emphasized to Meadows that he would "serve with similar diligence and distinction under [his] administration."

Meadows counters that party affiliation was not a factor when he filled his upper level command positions. Rather, he asserts that he made those appointments based on who he perceived could implement his policies and directives. He states, without contradiction, that of Sheriff Comes' upper level command staff, four were retained, two or three retired, and two or three (including Mills) were dismissed.[3] Both the group whom Meadows retained and those whom he newly appointed included members of the Democratic party. As to Mills himself, Meadows asserts that several factors led to his decision not to reappoint him, including Mills' loyalty to Comes, what Meadows perceived as Mills' failure to express

---

[3] The uncertainness of the retirement/dismissal figures depends upon how Colonel Thomas Broumel, who had been Comes' second-in-command, is classified.

loyalty to him, what Meadows perceived as Mills' mismanagement of the detention center and the Sheriff's Office budget, and a reluctance to work with Mills expressed by many of the rest of the upper level management team assembled by Meadows.

Mills' complaint contains eleven counts. Counts One through Four assert claims pursuant to 42 U.S.C. § 1983, alleging violations of various First Amendment and Fourteenth Amendment rights. Count Five states a claim for conspiracy under 42 U.S. C. § 1985. Counts Six, Seven, Eight and Eleven assert pendent state common law claims for wrongful discharge, negligent misrepresentation, intentional misrepresentation and intentional infliction of emotional distress, respectively. Count Nine seeks injunctive relief and Count Ten alleges violations of the Maryland Constitution.

II.

Discovery has not yet been conducted, and the first question I must decide is whether summary judgment is appropriate at this state of the proceedings. In my judgment it is appropriate. Whatever factual disputes exist are not material to the ultimate resolution of the issues. The record as it presently exists establishes that Mills held a position with the Sheriff's Office that was sufficiently high and powerful that it was reasonable and constitutionally proper for Meadows to replace him with an officer of his own choosing. In reaching this conclusion I am mindful of the concern expressed by the Fourth Circuit that litigation of this kind has the potential of "diverting sheriffs' attention from the important public safety issues in their communities." *Jenkins v. Medford*, 119 F.3d 1156, 1164 (4th Cir. 1997)(en banc).

III.

42 U.S.C. § 1983, upon which Counts One through Four are based, requires a plaintiff to establish a deprivation of a right secured by the Constitution or a federal statute. Mills asserts that his rights to free association and free speech, secured by the First and Fourteenth Amendments, have been violated.

A.

In *Elrod v. Burns*, 427 U.S. 347 (1976), and *Branti v. Finkel*, 445 U.S. 507 (1980), the Supreme Court declared that as a general proposition it is unconstitutional for government employees to be dismissed because of their political affiliation. Both cases were decided against the background of the traditional practice in many political subdivisions of staffing public offices with patronage appointments. In *Elrod* the Court carved out an exception for employees holding "policymaking" positions. *See Elrod*, 427 U.S. at 367. In *Branti*, while holding that assistant public defenders were not subject to patronage dismissals, the Court modified the *Elrod* exception, stating that "the ultimate inquiry is not whether the label 'policymaker'... fits a particular position; rather, the question is whether the hiring authority can demonstrate that party affiliation is an appropriate requirement for the effective performance of the public office involved." *Branti*, 445 U.S. at 518.

The Fourth Circuit has applied the *Elrod-Branti* exception and held that "newly elected or re-elected sheriffs may dismiss deputies ... because of party affiliation." *Jenkins*, 119 F.3d at 1164. *See also Upton v. Thompson*, 930 F.2d 1209, 1218 (7th Cir. 1991) (recognizing right of sheriff to rely upon political considerations when determining who will serve as

deputies); *Terry v. Cook*, 866 F.2d 373, 377 (11th Cir. 1989) (recognizing sheriff's absolute authority to decline to reinstate deputies who did not support him in election). The court reasoned that political affiliation "serves as a proxy for loyalty to the sheriff," and that loyalty is an appropriate job requirement that a sheriff may consider when filling positions resembling "a policymaker, a communicator, or a privy to confidential information." *Jenkins*, 119 F.3d at 1164 (internal citations omitted). The court reached its conclusion after conducting a detailed inquiry into the specific roles of the sheriff and deputies at issue in the case. *See id.* at 1163-64.

It is clear from the facts of this case that Mills' position within the Sheriff's Office was that of "a policymaker, a communicator, or a privy to confidential information," *see id.* at 1164 (internal citations omitted), and that his loyalty was a requirement appropriately considered by Meadows. As a captain, Mills was a highly placed official in the Comes administration. Though he denies being a part of Comes' upper level command staff, the record is clear that only a handful of individuals within the 230-member agency had attained an equal or higher rank. As a result he necessarily served as a link between the sheriff and the deputies in the agency, and played a significant role in the implementation of the sheriff's policies. Thus, Meadows could lawfully terminate Mills for political reasons under the *Elrod-Branti* exception to prohibited political terminations.

B.

Mills asserts a related First Amendment claim that must be separately considered. A government may not take adverse action against an employee for exercising his First Amendment rights. *See, e.g., Connick v. Myers*, 461 U.S. 563 (1968). Here,

Mills alleges that Meadows terminated his employment not only because of his political affiliation but also because had actively campaigned for Mills' opponent. In such a case it appears that a court should engage in an analysis under *Pickering* and *Connick* as well as under *Elrod* and *Branti*. *See O'Hare Truck Service, Inc. v. City of Northlake*, 518 U.S. 712, —, 116 S. Ct. 2353, 2357-58 (1996).

Pickering and *Connick* establish a two-step test to determine whether the speech of a public employee is constitutionally protected. First, the court must inquire whether the employee spoke on a matter of public concern. *See Connick*, 461 U.S. at 146-48. If so, the court must then balance "the interests of the [employee], as a citizen, in commenting upon matters of public concern and the interest of the State, as an employer, in promoting the efficiency of the public services it performs through its employees." *Pickering*, 391 U.S. at 568. The entire balancing process is an inquiry of law for the court. *See Joyner v. Lancaster*, 815 F.2d 20, 23 (4th Cir. 1987).

In *Jenkins*, 119 F.3d at 1164, the Fourth Circuit did not apply the *Pickering-Connick* test in determining that the defendant had properly discharged the deputy sheriff plaintiffs. However, in *Joyner*, 815 F.2d at 20, the court did apply *Pickering-Connick* to uphold the dismissal of a deputy sheriff whose employment was terminated because he campaigned on behalf of the incumbent sheriff's opponent. In that case, the deputy dismissed was one of four captains in a department of some 150 deputies, and he had only two superiors. *See id.* at 21. Noting the importance of the deputy's role in the operations of the department and implementation of the sheriff's policies, the court concluded that "mutual confidence and loyalty [between a sheriff and deputies] are of great importance," and approved the dismissal. *Id.* at 24.

There is no question that in this case Mills engaged in speech involving a matter of public concern. I find, however, that the interests of the public and Meadows in the effective and efficient fulfillment of the responsibilities of the Sheriff's Office outweighed Mills' interest in exercising his First Amendment rights. Like the plaintiff in *Joyner*, Mills was a high-ranking official in his department. He had very few superiors. Whatever his actual duties, by virtue of his rank Mills necessarily played a visible role in the administration, one with the concomitant ability to facilitate (or impede) the effective implementation of the sheriff's policies. Understandably, Meadows desired to full such a role with an individual he perceived to be both loyal and likely to command the respect of the deputies in the office who were his subordinates. He deemed Mills not to be such an individual, and thus declined to reappoint him as a deputy in his administration. That decision was not an unreasonable one. *See O'Hare Truck Service, Inc.*, 116 S. Ct. at 2358.

IV.

A.

In Count Five, which states a claim for conspiracy under 42 U.S.C. § 1985, Mills alleges that Meadows and other Harford County officials conspired to violate his constitutional rights. This claim also fails. Mills' allegations are made under § 1985(3). To state a cause of action under that section, plaintiff must allege "some racial, or perhaps otherwise class-based, invidiously discriminatory animus behind the conspirators' action." *United Brotherhood of Carpenters and Joiners of America v. Scott*, 463 U.S. 825, 829 (1983) (internal citations omitted). The record in this case is devoid of any allegation of such conduct, which is necessary to trigger the

proscription of § 1985(3).

B.

In light of my rulings to dismiss all of Mills' federal claims, I will decline to exercise supplemental jurisdiction over Mills' state law claims and will dismiss them. *See* 28 U.S.C. § 1367(c)(3).

A separate order effecting the rulings made in this Opinion is being entered herewith.

Date: April 16, 1998

J. Frederick Motz
United States District Judge

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF MARYLAND

Marlin Lee Mills	*	
Plaintiff	*	
		Civil Action No.:
v.	*	JFM-97-3329
Joseph P. Meadows, *et al.*	*	
Defendants	*	

* * * * * * * * * * * * * * *

ORDER

For the reasons stated in the Memorandum entered herewith, it is this 16th day of April, 1998.

ORDERED

1. The motion to dismiss or for summary judgment filed by defendant Joseph P. Meadows is treated as one for summary judgment as to Counts One through Five and is granted as such;

2. The motion to dismiss or for summary judgment filed by defendant Meadows is treated as a motion to dismiss as to Counts Six through Eleven and is granted as such;

3. The motion to dismiss filed by defendant Harford County, Maryland, is treated as a motion for summary judgment as to Counts One through Five and is granted as such;

4. The motion to dismiss filed by defendant Harford County, Maryland, is granted as to Counts Six through Eleven;

5. Judgment is entered in favor of defendants against Plaintiff as to Counts One through Five; and

6. Counts Six through Eleven are dismissed pursuant to 28 U.S.C. § 1367(c)(3).

J. Frederick Motz
United States District Judge